

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10586 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RAMCO PAINTCHEM INDUSTRIES

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners
Mr. Kamal Mehta for the respondents

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.L.DAVE

Date of decision: 18/01/99

ORAL JUDGEMENT : (Per B.C. Patel, J.)

Rule. Mr. Mehta, learned counsel for the respondents waives service of the rule. At the request of counsels, we have heard the matter today looking to the nature of the matter.

2. From the record it appears that by an order at Annexure 'A' dated 11.11.1996 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai, the appeals were dismissed. An application for restoration was filed vide Annexure 'B' and the same came to be dismissed on 29.4.1997, vide Annexure 'C' as the applicants were absent.

3. The aforesaid two orders, Annexures 'A' and 'C' are challenged by filing the present petition.

4. Mr.Dave, learned advocate submitted that before passing the order at Annexure 'C', attention of the Tribunal was drawn to a reported decision in the case of Viral Laminates Pvt. Ltd and another v. Union of India and others, 1998 (100) ELT 335 : 1998 (3) GLR 1944, inter alia requesting not to dismiss the appeal for default of appearance and to dispose of the same on merits. Despite this, the application came to be dismissed by order dated 29.4.1997. This date we have taken as mentioned at Annexure 'C' to this petition. (The order sheet is signed by the learned advocate as "true copy" of the order). After seeing the date, we put a question to the learned advocate as to whether the judgment was pointed out to the Tribunal or not. He fairly stated that the judgment was pointed out to the Tribunal by referring the same in the application. Thereafter, we pointed out the dates mentioned in the order, which reads as "29.4.1997" as date of hearing and date of decision. Thereafter, he stated that he would like to withdraw the statement made in the appeal as well statement made orally at the Bar. Once a statement is made at the Bar, the learned advocate should be conscious of his duty and he should also be careful while signing the document as a true copy.

5. From the order at Annexure 'A', it appears that this very applicants requested the Tribunal not once but on five occasions for adjournments and it appears that the Tribunal accommodated the advocate concerned. Again the application was forwarded and it was rejected and appeal was dismissed. This amounts to waste of time of the public.

6. In para 11 of the reported decision in Viral Laminates Pvt. Ltd (supra), this Court has held as under:

"11. For the foregoing reasons, the petitions succeed. That part of Rule 20 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 which enables the Appellate Tribunal to dismiss an appeal for default of appearance as well as proviso to Rule 20 is held to be ultra vires the provisions of Sec.35C(1) of the Central Excises & Salt Act, 1944 as well as Sec.129B(1) of the Customs Act, 1962. It is declared that the Appellate Tribunal has no power to dismiss an appeal for non appearance of the appellant and the appeal should be decided on merits. Consequently the orders, i.e., the orders dismissing the appeals for default and rejecting the applications for restoration of appeals in each petition are hereby set aside and quashed. The Appellate Tribunal is directed to dispose of the appeal filed by the petitioners in each petition on merits and in accordance with law."

7. It is under these circumstances, we allow this application. Rule is made absolute accordingly. However, we direct that the petitioners shall pay cost of Rs.10,000/- (Rupees ten thousand only) in this Court within the period of two weeks. Out of the amount so deposited, a sum of Rs.5,000/- (Rupees five thousand only) shall be remitted to the Customs, Excise & Gold (Control) Appellate Tribunal, Mumbai.

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